

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Compatibility Between Cable)
Systems And Consumer)
Electronics Equipment)

PP Docket No. 00-67

To: The Commission

**Reply Comments of the
CONSUMER ELECTRONICS RETAILERS COALITION**

The Consumer Electronics Retailers Coalition ("CERC") respectfully submits these reply comments pursuant to the April 24, 2000 Notice of Proposed Rule Making ("NPRM") issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding.¹

CERC is comprised of the major U.S. retailers of Consumer Electronics ("CE") and Information Technology ("IT") products: Best Buy Co., Inc., of Minneapolis, Minnesota; Circuit City Stores, Inc., of Richmond, Virginia; RadioShack (formerly Tandy) Corporation, of Fort Worth, Texas; and Sears, Roebuck & Co., of Chicago, Illinois. CERC also includes major retail trade associations, the International Mass Retail Association ("IMRA") and the National Retail Federation ("NRF"). CERC participated actively in the Commission dockets, with respect to cable devices, that set the stage for this proceeding: ET Docket 93-7, as to "cable compatibility," and CS Docket 97-80, intended to enforce Section 304, the "competitive availability" provision of the 1996 Telecommunications Act.² CERC and its members were also active in persuading the Congress to pass this important legislation.

The May 24 letter from NCTA, joined by CEA, proposing a set of labels for future "DTV" products,³ urgently required CERC to enter this proceeding in order to

¹ *In the Matter of Compatibility Between Cable Systems and Consumer Electronics Equipment*, PP Docket No. 00-67, Notice of Proposed Rulemaking (Rel. Apr. 14, 2000)(the "Compatibility NPRM").

² CERC Reply Comments *In the Matter of Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment*; ET Docket No. 93-7 and CERC Comments and Reply Comments *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, CS Docket No. 97-80.

³ Letter from Robert Sachs and Gary Shapiro to William E. Kennard, PP Docket No. 00-67 (filed May 24, 2000) (the "NCTA/CEA Letter").

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state its strong and unqualified opposition. CERC believes that, if endorsed by the Commission, this recommendation would mislead consumers, would impede competition, and would undermine, rather than strengthen, the crucial OpenCable initiative that it was intended to support. CERC urges the Commission not to take any action, to dispose of this facet of the NPRM, based on this recommendation. CERC also joins those commenters who have spoken up to protect consumer rights on issues related to copy protection and pending license proposals.

I. The Proposed Labels Are Based On Incorrect Premises, Hence Would Mislead Consumers And Support Incorrect Policy Assumptions.

The objective of the labeling proposal to which CERC objects would be to inform consumers as to device operation on cable systems. But the labels, as proposed, instead would address product status relative to the IEEE 1394 interface, which facilitates digital connection of one "box" to another. This interface neither enables nor addresses access to cable services. It should not be the focus of this labeling initiative. Making it so would enmesh the Commission, and consumers, in a long chain of assumptions, some of which are factually incorrect or contrary to established policy or proceedings, and others of which are highly controversial.

The labels are proposed for application only to "digital television devices." They purport to distinguish, for purposes of Cable reception, the operation of "DTV sets" equipped with the IEEE 1394 interface and those not so equipped. According to the labels, only those "DTV sets" that sport a 1394 interface would be able to receive "[a]dvanced and interactive digital services and programming"⁴ The purchaser is further advised that "[a]dvanced programming and services require a *digital TV cable set-top box that incorporates a digital interface (IEEE 1394).*"⁵

"DTV sets" lacking the 1394, box-to-box interface, would have to bear the following disclaimer, which would also be required in "CE manuals and brochures":

DISCLAIMER

This digital television device is not equipped with a 1394 digital connector. As a result, the cable services it receives may be limited. When using this television device, you may not receive the cable

⁴ *Id.*

⁵ NCTA/CEA Letter at 2 (emphasis added); NCTA Comments at 13.

operator's advanced and interactive digital services and High Definition programming, such as impulse pay-per-view, video-on-demand, enhanced program guide, and data-enhanced television services. Please contact your cable operator for service and programming options.⁶

As CERC member Circuit City stated in its May 24 comments, any such regime would ignore the plans for a "bidirectional" OpenCable specification, covering these very devices, that is both fully integrated and fully interactive. According to the proposed labels, such products, though interactive, would have to be labeled as non-interactive. Moreover, the labels assume that even for those OpenCable devices that would rely on other "boxes" for their interactivity, there is no interface other than "1394" available. This assumption ignores both the interfaces presently used for such purposes (*e.g.*, "RGB," "Y,Pr,Pb") and other digital interfaces nearing introduction (*e.g.*, "HDCP").

As many commenters (including CEA) have noted, the 1394 interface is not an exclusive means of receiving either interactive services or HDTV programming.⁷ Indeed, it is not a means of receiving cable programming at all.⁸ Making it the focus of any Commission labeling initiative would mislead consumers, and would mischaracterize the choices available to them in the future.

A. Any Fair Reading Of The Proposed Labels Suggests There Will Never Be An Interactive OpenCable Specification.

The Comments of CERC member Circuit City described the development of the OpenCable specifications, the respects in which the Cable industry cannot be in compliance with its promises and obligations, and the unfortunate fact that the "interactive" OpenCable specification is at least a year behind schedule.⁹ These

⁶ NCTA/CEA Letter at 2; NCTA Comments at 13; Time Warner Comments at 18.

⁷ See, *e.g.*, CEA Comments at 10; Circuit City Comments at 6; 5C Comments 9.

⁸ Circuit City Comments at 6.

⁹ *Id.* at 2-3, 9-10. The Commission should not be misled by claims that interactive OpenCable specifications support "retail" products based on an assumption that the "retail" devices will be manufactured so as to be tailored to the particular cable system on which the device is to run. No consumer retailer could possibly arrange for a DTV receiver product to be manufactured or distributed in conformance with different requirements of 1200 separate cable systems. Such a product would not be "retailable," nor, if such a product existed, would it be of use to a consumer who planned to move from one cable service area to another. These issues are well settled. *Navigation Device R&O* ¶¶ 66,126-132. When CERC members refer to the "bidirectional specification" for integrated DTV receivers as one year behind, they refer to a specification that would actually fulfill OpenCable's promise with respect to both competition and consumers.

failed commitments and delays suggest that the intent of the Cable industry is clearly for consumers to purchase dumb monitors with all intelligence and control resident in an MSO provided box. CERC members hope that the Cable industry, consumer electronics manufacturers, and the Commission will affirm, however, that there will be such a thing as an interactive ("bidirectional") OpenCable specification, and that it will be implemented in both integrated receivers and separate CE and IT products as soon as is humanly possible. If this is true, the labels are simply incorrect in labeling such devices – which would not in the least need to rely on the 1394 interface to receive all cable services, interactive or otherwise – as non-interactive.

CERC prefers to believe that the interactive, "bidirectional" OpenCable interface is merely late rather than headed for complete demise. Even if the latter were the case, however, the Commission should not bless this label. In such case, Cable MSOs would be in clear violation of Section 304, FCC regulations, and the Navigation Device R&O. CERC and its members would move for sanctions against the deployment of interactive MSO boxes. If the Commission were to agree that the MSOs have backed away from their promises, and were to order sanctions, the "other boxes" cited in the labels would not be available to consumers in any event.

B. The Proposed Labels Are Misleading In Assuming That Only The 1394 Interface Will Offer Box-to-Box Interactive Services.

Even if the Commission were to conclude that OpenCable will never produce a specification for interactive devices, so that POD-equipped DTV receivers *still* would require set-top boxes in order to receive interactive services, the proposed labels would still be wrong in stating that only the IEEE 1394 interface can connect a set-top box to a DTV receiver in order to provide such services. Proof rolls off the General Instrument and Scientific Atlanta assembly lines, and out of MSO delivery trucks, every day, in the form of digital set-top boxes, all of which offer interactive services to DTV receivers, and none of which contain the IEEE 1394 interface.

While, as Circuit City noted, the 1394 interface is an excellent way to connect one device to another in a home network, there is nothing about it that facilitates

interactivity of a DTV receiver with a cable system.¹⁰ All it does is hook up another device, which might or might not be superior in its ability to work interactively on the cable system. The GI and SA boxes produced today, though they lack the 1394 interface, have several technical routes available to work interactively with the DTV receivers owned by consumers.¹¹

The Home Recording Rights Coalition, ITI, and other CE commenters (including CEA) urged the Commission not to become complicit in motion picture industry proposals to shut down the transmission of programming over the component analog interface, the primary means for sending programs from these set-top boxes to these DTV receivers today.¹² This crucial issue should not be concluded, against vested consumer interests, in the guise of a "labeling" initiative.

C. The Proposed Labels Are Misleading In Assuming That Only The 1394 Interface Will Be Available To Carry HDTV Programs From Box To Box.

Even if it could be shown, against plain experience, that the 1394 interface, but not RGB, Y,Pr,Pb, HDCP, or any other interface, conveys some magic with respect to cable connection and interactivity, the labels would be wrong in suggesting that a box-to-box interface of any sort would be necessary to receive HDTV programming. But the labels are proposed only for integrated DTV receivers, not set-top boxes. The labels themselves assume connection and operation of a POD, and application of the DFAST license. How could connection of another box influence the resolution capabilities of the receiver, which is capable of a direct connection to the cable system?

The inclusion of the HDTV reference in the disclaimer makes sense *only* if one assumes (1) that, despite OpenCable, set-top boxes will have unidirectional *tuning* capabilities that POD-enabled DTV receivers will lack, and (2) that *only* the 1394 interface will be available to transmit the box-tuned programs to a DTV receiver. It is, frankly, puzzling that CEA could have agreed to the HDTV reference (or indeed

¹⁰ Circuit City Comments at 6.

¹¹ As Circuit City noted in its comments, the overwhelming majority of DTV receivers sold today are sold as monitors that lack tuners. Circuit City Comments at 11, n.11. Yet their suite of component analog and NTSC inputs is sufficient to receive both interactive services and HDTV programming through the digital set-top boxes, without the 1394 interface, that are available today.

¹² See Section III; HRRC Comments at 4-5; CEA Comments at 15-17.

any of the other label proposals), as CEA otherwise has been steadfast in its desire that OpenCable specifications for DTV reception be meaningful, and that the inputs relied upon by the DTV receivers presently on sale to consumers not be cut off.

D. In Addition To Being Misleading, The Proposed Labels Are Unclear And Based On Supposition.

Nowhere does the labeling proposal define a "digital television device." Would a PC, equipped with an OpenCable POD and connected to a high resolution monitor by the analog RGB interface, be covered? If not, why not? If so, what about a PC connected to the same monitor by a digital, copy-protected, "HDCP" interface? The labeling proposal seems to carry an entire set of assumptions, with respect to future security interfaces and technologies, device interfaces, and home network architectures, that are already invalid or soon might be.

Moreover, the proposal assumes the conclusion of two negotiations that are far from complete. First, it assumes that there will be a successful conclusion to the negotiations between the "5C" companies and motion picture studios over licensing terms for copy protection technology covering the 1394 interface.¹³ The Commission cannot know the shape of a final agreement, if any, yet the proposed labels assume one. Second, the labels assume the outcome of negotiations over the DFAST license (apparently pessimistically on the part of CEA, which in its filing says that alternative interfaces should *not* be cut off).¹⁴ While these labels should be ruled out as inherently misleading no matter what, they could not even be applied within the limits of their own flawed assumptions unless the outcome of these other negotiations were known.¹⁵

It is also strange that the label for a "Cable Connect" DTV set warns that a POD is necessary to receive encrypted programming, but *there is no such warning*

¹³ As the Commission notes in its NPRM, it is lack of such an agreement which for almost two years appears to have prevented the 1394 interface from having been deployed in DTV receivers.

¹⁴ CEA Comments at 10-12.

¹⁵ The precise nature of such agreements could determine the applicability of such labels. For example, if a "DTV set" were sold in two pieces, as a simple monitor connected by RGB to a POD-equipped tuner box with a 1394 interface, would the label be required on the DTV receiver? If, as the label suggests, a 1394-equipped set-top box would have to be added to receive interactive or HDTV services, whether programs will be allowed to pass over the RGB interface linking the two halves of the "set" would be determined by the provisions of both the "5C" and the "DFAST" licenses. Each is still under negotiation.

*in the case of a "Cable Interactive" set. This implies that NCTA and CEA also decided that DTV sets equipped with the 1394 interface would not also be equipped with PODs, so will **always** require a set-top box to receive programming?*¹⁶ This is an assumption about the marketplace that CERC believes the Commission cannot and should not endorse.

II. Appropriate Labels, With Respect To Interactivity, Would Inform The Consumer Whether Or Not the Appliance Provides Interactive Services.

Freed of other agendas and assumptions, labels with respect to device interactivity as to cable services would simply inform the consumer whether the device he or she is buying offers such services. It is to the great frustration of consumer electronics retailers that until the interactive, "bidirectional" OpenCable specification is ready, such labels would disclose that retail IT and CE products do not offer this feature. But at least such labels would not mislead consumers, or ensnare the FCC in agendas that would reduce OpenCable competition and eliminate interfaces on which consumers presently rely. Such a set of labels might read:

Cable Interactive – Features two-way communication facility for receipt of advanced and interactive cable services via this receiver's remote control. Cable security card required for receipt of encrypted programming.

Cable Direct – Features direct receipt of cable programming. Two-way communication not available via remote control. Cable security card required for receipt of encrypted programming.

As the CEA and Circuit City comments relate, the idea of labels for DTV receivers grew out of the inability of NCTA and CEA to agree on whether the 1394 interface should be made mandatory for all OpenCable products. Hence, the entire idea for such labels arose in a political and strategic, rather than consumer-oriented, context. Every attempt at "cable ready" labeling to date has done more harm than good. CERC members are more than capable of explaining the features and functions of products, without reference to labels that may carry implicit

¹⁶ MPAA would like to encrypt *all* digital programming travelling over cable. MPAA Comments at 7-8; See Fox Comments at 15; Viacom Comments at 4.

assumptions and nefarious agendas. Aside from matters of safety and standard measurement, the best "label" is the competitive marketplace. If the Commission does see the need for one, however, the label should at least address the subject for which it is proffered.

While CERC members would be content to see these labeling questions left to the marketplace, if there are to be any further FCC industry consultations with respect to this proceeding, CERC members would like to be included. It is, after all, the CERC members and other retailers who must integrate the operation of the various products for the consumer, and who must attempt to explain any such labels to the consumer, sometimes under threat of litigation for alleged failures to do so.

III. CERC Endorses The HRRC, CEA And ITI Comments As To Copy Protection Issues And The Proposed DFAST License.

CERC members have sold many or most of the HDTV and DTV receivers now in the hands of consumers. CERC endorses the comments of its member Circuit City as to the Commission's obligation to protect the rights and interests of the pioneering consumers who entered the digital frontier. More specifically, CERC endorses the comments of the Home Recording Rights Coalition, CEA, and others who argue that support for the interfaces over which these receivers get HDTV and other programming should not be cut off, and copy protection outcomes should not be approved unless they are balanced and fair to consumers.¹⁷

As retailers, CERC members join Circuit City in insisting on the vital point that no technical or copyright-based regime should be imposed on competitive devices that does not apply equally, and contemporaneously, to devices leased by MSOs.¹⁸ As to the particular questions raised by the Commission about some licenses presently under negotiation, CERC agrees with those commenters who say that consumer equity must be preserved, that the Commission would have to change its regulations to approve the DFAST license, and that the present license

¹⁷ See Circuit City Comments at Section IV; HRRC Comments at Section I.

¹⁸ See Circuit City Comments at Section IV.

draft lacks the balance that other negotiated or enacted copy protection measures have contained.¹⁹

A. Copy Protection Outcomes Should Be Fair To Consumers.

It would be unprecedented for the FCC to conclude this proceeding by endorsing the imposition of licensing regimes that, with respect to home interfaces or private, noncommercial home recording, oppress consumers. No other official approach to copy protection has proceeded without either recognizing consumer fair use or specific "encoding rules" aimed at ensuring fair and balanced outcomes. CERC endorses the "Core Principles" as to home recording set forth as Appendix A of the HRRC comments.

B. The Draft DFAST License Is Dramatically Unfair To Consumers And Stands As An Impediment To Competitive Entry.

Neither the principles set forth in the HRRC comments nor any of the attempts at balance employed in legislation or licenses are given any recognition in the DFAST license. This issue is extremely important to retailers. As a consequence of industry concerns over theft of service, retailers have had to accept a 0 market share for Navigation Devices that perform conditional access. Their share remains 0 into the first several years of the digital era. Now, with progress in sight, the DFAST license stands, contrary to the FCC's mission and its regulations, as a severe and unnecessary obstacle to competitive entry.

IV. CERC Agrees With Circuit City That MSO Devices Should Be Subject To The Same Rules And Specifications As Competitive OpenCable Devices.

The Circuit City filing recounts all of the ways in which the interests of retailers, and their customers, have suffered through tardy fulfillment, or non-fulfillment, of obligations to the Commission that were supposed to be for their benefit. Now, there are indications that the Cable industry would consider their obligations to have been met if a device works on *one* cable system rather than

¹⁹ Philips Comments at 8; Thomson Comments at 7.

nationally.²⁰ Given the history of disappointments, surprises, and the persistence of 0 retail market share as July 1, 2000 approaches, it becomes clearer and clearer that a level playing field will not be attained until (1) OpenCable specifications are truly enabling and truly national, and (2) MSO-provided devices must rely on the same specifications that the Cable industry devises for competitive entrants. Such a market-based approach is clearly preferable to continued regulation, or the imposition of punitive sanctions for noncompliance with specific regulations. Accordingly, CERC urges that the Commission resolve pending issues by requiring that, as of January 1, 2002, MSO-provided devices should conform to the same technical rules (including reliance on POD modules) as the industry sets down for competitive entrants.

Conclusion

CERC urges the Commission not to take any action on the labeling proposal that has been submitted in this proceeding. If there is to be any further activity with respect to labeling, the Commission should consult with all those potentially affected, including CERC members. Issues raised by the NPRM with respect to interface support and copy protection are vitally important to CERC customers, and should be addressed in a balanced fashion that recognizes consumer rights and investments in new technology.

²⁰ This approach is strictly contrary to the aims of the Commission as expressed in the Navigation Device R&O. *Navigation Device R&O* ¶ 126-132.

Respectfully submitted,

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Certificate of Service

I, Janet Davis, hereby certify that true copies of the foregoing Reply Comments of the Consumer Electronic Retailers Association, were served by hand on June 8, 2000, to the persons listed below.

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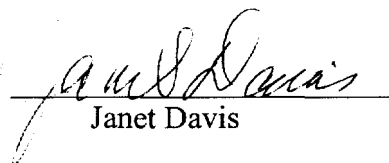
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